

June 15, 2020

The Honorable George B. Daniels  
United States District Court for the Southern District of New York  
500 Pearl Street, Room 1310  
New York, NY 10007

RE: *Make the Road New York, et al. v. Ken Cuccinelli, et al.*, 19-cv-7993 (GBD) (“MRNY”); *State of New York, et al. v. U.S. Dep’t of Homeland Security, et al.*, 19-cv-7777 (GBD) (“*State of New York*”).

Dear Judge Daniels:

Plaintiffs in these actions respectfully submit this letter to inform the Court of recent supplemental authority supporting denial of Defendants’ pending motion to dismiss.

In *Cook County, Illinois, et al. v. Wolf*, No. 19-3169 (7th Cir. June 10, 2020) (“Op.”) (enclosed), the Seventh Circuit affirmed a preliminary injunction against the Public Charge Rule at issue here. The court held that the Rule was likely contrary to the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1182(a)(4), and the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), Op. at 25–31, and arbitrary and capricious, *id.* at 31–39. These holdings strongly support denying Defendants’ motion to dismiss the same claims here.

In holding that the Rule likely violated the INA, the court concluded that the statutory term “public charge” “requires a degree of dependence that goes beyond temporary receipt of supplemental in-kind benefits from any type of public agency.” Op. at 30. *See* Plaintiffs’ Br. in Opposition to Defendants’ Mot. to Dismiss (“Plaintiffs’ Br.”), at 3–8, 29–33. The court also held that the Rule was not justified by the reference to immigrant “self-sufficiency” in the statement of purpose in the 1996 Welfare Reform Act, 8 U.S.C. § 1601(1). The court reasoned that the Act achieved that goal by limiting noncitizen access to certain benefits, and did not

create a regime that permitted self-sufficiency to trump all other goals, nor did it modify the public-charge provision to penalize receipt of non-cash as well as cash assistance.

Op. at 29–30. *See* Plaintiffs’ Br. at 34–35. The court further held that “[t]he conclusion is inescapable that the Rule penalizes disabled persons in contravention of the Rehabilitation Act.” Op. at 28. *See* Plaintiffs’ Br. at 55–56.

Finally, the court concluded that the Rule was likely arbitrary and capricious because, in enacting the Rule, DHS

did not acknowledge or address the significant, predictable collateral consequences of the Rule; incorporated into the term “public charge” an understanding of self-sufficiency that has no basis in the statute it supposedly interprets; and failed to address

critical issues such as the relevance of the five-year waiting period for immigrant eligibility for most federal benefits.

Op. at 38–39. *See* Plaintiffs’ Br. at 45–54.

Respectfully submitted,

By: /s/ Jonathan H. Hurwitz

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Enclosure